

No. 12688

United States
Court of Appeals
for the Ninth Circuit.

J. HOWARD McGRATH, Attorney General of the
United States, and D. W. BREWSTER, Dis-
trict Director, Immigration and Naturalization
Service for the District and Territory of
Hawaii,

Appellants,

vs.

CHUNG YOUNG,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Territory of Hawaii.

FILED

DEC - 9 1950

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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For the Complainant, Chung Young:

E. J. BOTTS, ESQ.,
Stangenwald Building,
Honolulu, Hawaii.

For the Defendants, J. HOWARD McGRATH and
D. W. BREWSTER:

RAY J. O'BRIEN.
United States Attorney,
District of Hawaii,
Federal Building,
Honolulu, Hawaii.

In the United States District Court for the
Territory of Hawaii

Civil No. 963

Proceedings Under Nationality Act of 1940
Title 8, Section 903

CHUNG YOUNG,

Complainant,

vs.

J. HOWARD McGRATH, Attorney General of the
United States, and D. W. BREWSTER, Dis-
trict Director, Immigration and Naturalization
Service for the District and Territory of
Hawaii,

Defendants.

COMPLAINT

Comes now Chung Young, complainant above-named, and complaining of J. Howard McGrath, Attorney General of the United States, and D. W. Brewster, District Director, Immigration and Naturalization Service for the District and Territory of Hawaii, defendants above-named, alleges as follows:

I.

Complainant alleges that J. Howard McGrath is the Attorney General of the United States and, as such, is the head of the Immigration and Naturalization Service, which is a part of the Department of Justice, and complainant alleges that D. W. Brew-

ster is an executive officer of the Immigration and Naturalization Service and is the District Director of said service for the District and Territory of Hawaii.

II.

Complainant alleges that he is a Chinese person and a citizen of the United States by virtue of his birth in the Territory of Hawaii.

III.

Complainant was born in Honolulu, Territory of Hawaii, in 1901, and is a citizen of the United States by virtue of his said birth.

IV.

Complainant alleges that under the rules and regulations of the Immigration and Naturalization Service a certificate known as "Certificate of Citizenship—Hawaiian Islands" is issued to a Chinese citizen who is about to go abroad as an authentication of his status as a citizen, and such certificate is of great value to the holder thereof in his travels, and said certificates are issued by said service to Chinese citizens for the purpose of facilitating their travels abroad.

V.

Complainant alleges that, being desirous of making a trip abroad, to wit, to China, he applied to the Immigration Service at the Port of Honolulu for a "Certificate of Citizenship—Hawaiian Islands," but the same was denied him on the

ground that he was not a citizen of the United States; complainant duly appealed from said denial to the central office of the Immigration Service, but said appeal was dismissed, and complainant alleges that the refusal to issue him said "Certificate of Citizenship—Hawaiian Islands" is arbitrary and unfair. Complainant further alleges that it is necessary for him to have and obtain said "Certificate of Citizenship—Hawaiian Islands" in order to procure a passport which is needed by him in order to make his trip abroad.

VI.

Complainant alleges that by reason of the arbitrary and unfair denial to him of a "Certificate of Citizenship—Hawaiian Islands," he has been denied the right and privilege he is entitled to as a national of the United States, and that he is entitled to the judgment of this Court declaring him to be a national of the United States.

Wherefore, complainant prays that process issue out of this Court citing defendants to appear and answer this complaint, and after a hearing before this Honorable Court, an order and judgment be entered holding and declaring complainant to be a national of the United States.

Dated: Honolulu, Hawaii, January 25, 1950.

/s/ CHUNG YOUNG.

Territory of Hawaii,
City and County of Honolulu—ss.

Chung Young, being first duly sworn, on oath de-

poses and says: That he is the complainant above-named; that he has read the foregoing complaint, knows the contents thereof, and that the same are true.

/s/ CHUNG YOUNG.

Subscribed and sworn to before me this 25th day of January, A.D. 1950.

[Seal] /s/ JIUNKI MAEDA,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1953.

[Title of District Court and Cause.]

SUMMONS

To the above-named Defendants:

You are hereby summoned and required to serve upon E. J. Botts, Esq., plaintiff's attorney, whose address is Stangenwald Building, Honolulu, T. H., an answer to the complaint which is herewith served upon you, within sixty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk of Court.

Date: Jan. 26, 1950.

[Title of District Court and Cause.]

UNITED STATES MARSHAL'S RETURN

Received the attached Summons this 26th, day of January, 1950, and the same is returned duly executed this 26th, day of January 26th, 1950, by handing to and leaving with L. H. Haus, Immigration Station, Honolulu, T. H., authorized agent to accept service of process for D. W. Brewster, Director in Charge of Immigration and Naturalization Service, Honolulu, T. H.; by handing to and leaving with Winston C. Ingram, Assistant U. S. District Attorney, for the District of Hawaii, Federal Building, Honolulu, T. H. two certified copies of the said Summons, and by mailing by registered mail return receipt requested two certified copies of the said Summons to J. Howard McGrath, Attorney General of the United States, Washington, D. C.

OTTO F. HEINE.,
U. S. Marshal.

By /s/ GEORGE E. BRUNS,
Deputy.

[Post office return receipt attached.]

[Endorsed]: Filed January 26, 1950.

[Title of District Court and Cause.]

GENERAL DENIAL

Come now J. Howard McGrath, Attorney General of the United States, and D. W. Brewster, District Director, Immigration and Naturalization Service for the District and Territory of Hawaii, Defendants above-named, by Ray J. O'Brien, United States Attorney for the District of Hawaii and denies each and every, all and singular, the allegations contained in the Complaint filed herein.

Dated: Honolulu, T. H., this 24th day of March, 1950.

RAY J. O'BRIEN,
United States Attorney,
District of Hawaii.

By /s/ HOWARD K. HODDICK,
Assistant United States Atty.
District of Hawaii.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 24, 1950.

[Title of District Court and Cause.]

FINDINGS OF FACT

This cause came on for trial on the 26th day of April, 1950, before the undersigned Judge of the above-entitled Court, E. J. Botts, Esq., appearing for complainant, and Howard K. Hoddick, Esq., appearing for defendants, and from the evidence

adduced the Court makes the following findings of fact:

I.

That complainant was born in Honolulu, Territory of Hawaii, on April 26, 1901, and soon thereafter, he was taken to China by his mother.

II.

That in 1923, complainant returned to the United States as a passenger on the S. S. President Taft and applied for admission as a citizen at the Port of Honolulu; that he was given a hearing before a Board of Special Inquiry, and said Board, after hearing the evidence offered on behalf of complainant, held and found that he was a Hawaiian-born citizen of the United States and was entitled to admission as such, and was admitted, and ever since said time complainant has resided in the United States.

III.

That recently, being desirous of making a trip abroad, complainant applied to the Immigration Service at the port of Honolulu for a "Certificate of Citizenship—Hawaiian Islands," but the same was denied him and, thereafter, complainant appealed to the central office of the Immigration Service at Washington, D. C., but said appeal was dismissed.

IV.

The Court finds from the evidence adduced before it, including the exhibits, that complainant was born

in Honolulu, Territory of Hawaii, on April 26, 1901, and is a citizen of the United States by virtue of his said birth, and that he is entitled to an order and judgment of this Court holding and declaring him to be a national of the United States. An order to this effect will be signed on presentation.

Dated: Honolulu, Hawaii, April 29, 1950.

/s/ D. E. METZGER,

Judge, United States District Court, Territory of Hawaii.

[Endorsed]: Filed May 3, 1950.

In the United States District Court for the
Territory of Hawaii
Civil No. 963

Proceedings Under Nationality Act of 1940
Title 8, Section 903

CHUNG YOUNG,

Complainant,

vs.

J. HOWARD McGRATH, Attorney General of the
United States, and D. W. BREWSTER, Dis-
trict Director, Immigration and Naturalization
Service for the District and Territory of
Hawaii,

Defendants.

ORDER AND JUDGMENT

The above-entitled matter coming on to be heard before the undersigned Judge of the United States District Court for the Territory of Hawaii on the 26th day of April, 1950, E. J. Botts, Esq., appearing for the complainant, and Howard K. Hoddick, Esq., appearing for the defendants, evidence was adduced by the respective parties and, after argument by counsel, the matter was submitted to the Court for his decision, and the Court thereupon rendered his oral decision from the bench, holding and finding that complainant was born in Honolulu, Territory of Hawaii, on April 26, 1901, and was a national and citizen of the United States;

Now, Therefore, pursuant to said oral decision, it is the judgment and declaration of this Court that the said Chung Young is a national and citizen of the United States by virtue of his birth in Honolulu on April 26, 1901.

Dated: Honolulu, Hawaii, April 29, 1950.

/s/ D. E. METZGER,

Judge, United States District Court, Territory of Hawaii.

[Endorsed]: Filed and Docketed May 3, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO UNITED STATES
COURT OF APPEALS FOR THE NINTH
CIRCUIT UNDER RULE 73(b)

Notice is hereby given that J. Howard McGrath, Attorney General of the United States, and D. W. Brewster, District Director, Immigration and Naturalization Service for the District and Territory of Hawaii, defendants above-named, do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final order and judgment entered in this action on the third day of May, 1950, declaring that the complainant is a national and citizen of the United States by virtue of his birth in Honolulu on April 26, 1901.

Dated at Honolulu, T. H., this 29th day of June, 1950.

/s/ RAY J. O'BRIEN,

United States Attorney for the District of Hawaii,
and Attorney for J. Howard McGrath, Attorney General of the United States, and D. W. Brewster, District Director, Immigration and Naturalization Service for the District and Territory of Hawaii.

Defendants.

[Endorsed]: Filed June 29, 1950.

[Title of Cause.]

MINUTE ORDER

It is hereby ordered that J. Howard McGrath, Attorney General of the United States, and D. W. Brewster, District Director, Immigration and Naturalization Service for the District and Territory of Hawaii, defendants in the above-entitled cause, who have heretofore filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit, may have up to and including the 25th day of September, 1950, within which to file and docket the record on appeal with the United States Court of Appeals for the Ninth Circuit.

Dated at Honolulu, T. H., August 8, 1950.

/s/ D. E. METZGER,

Judge, United States
District Court.

[Endorsed]: Filed August 11, 1950.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

In making up the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit in the above-entitled cause, you will please include the following:

1. Complaint, Summons and Marshal's Return.
2. General Denial.

3. Official Reporter's Transcript of Proceedings had on April 26, 1950.

4. Defendants Exhibit No. 1.

5. Findings of Fact dated April 29, 1950.

6. Order and Judgment dated April 29, 1950.

7. Notice of Appeal dated June 29, 1950.

8. Minute Order dated August 8, 1950.

9. This Designation of Record on Appeal.

Dated: Honolulu, T. H., this 5th day of September, 1950.

RAY J. O'BRIEN,
United States Attorney
District of Hawaii.

By /s/ HOWARD K. HODDICK,
Assistant United States Atty.
District of Hawaii.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 6, 1950.

In the United States District Court
for the District of Hawaii

Civil No. 963

Proceedings Under Nationality Act of 1940,
Title 8, Section 903

CHUNG YOUNG,

Complainant,

vs.

J. HOWARD McGRATH, Attorney General of
the United States, and D. W. BREWSTER,
District Director, Immigration and Naturali-
zation Service for the District and Territory
of Hawaii,

Defendants.

TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter, which came on for
hearing April 26, 1950, Honolulu, T. H.

Before: Hon. Delbert E. Metzger,
Judge.

Appearances:

E. J. BOTTS, Esq.,
Stangenwald Building, Honolulu, T. H.,
Appearing for the Complainant.

HOWARD K. HODDICK, Esq.,
Assistant United States Attorney,
Appearing for the Defendants.

Honolulu, T. H., April 26, 1950

The Clerk: Civil No. 963, Chung Young vs. J. Howard McGrath, for trial.

Mr. Botts: Ready, your Honor. This is a petition for a certificate of citizenship, or judgment of citizenship.

Would you sit up there in that little chair, please.

The Clerk: Do you want me to swear him in now?

Mr. Botts: I think we had better.

CHUNG YOUNG

called as a witness on behalf of the Complainant, being first duly sworn, was examined and testified as follows:

The Clerk: Just sit down, please.

Direct Examination

By Mr. Botts:

Q. Your name is Chung Young? A. Yes.

Q. And where were you born?

A. Honolulu.

Q. And what date were you born?

A. 1901, April 26.

(Testimony of Chung Young.)

Q. And you are a citizen of the United States because of your birth here; is that correct?

A. Yes.

Mr. Hoddick: Objection. Move to strike the answer [1] of the witness.

Mr. Botts: OK, if Counsel wants it I have no objection.

Mr. Hoddick: It is a conclusion of the witness.

Mr. Botts: You were born here. It was an unnecessary question. I don't see why it should be objected to. The Constitution says he is a citizen.

The Court: All right.

Q. (By Mr. Botts): When you were a baby, what happened to you? Where did you go?

A. One year old my mother bring me to China.

Q. To China? A. Yes.

Q. And when did you come back from China?

A. Me?

Q. Yes.

A. 1923, October, around 26th, but the date I don't remember. I cannot remember so sure, but on the President Taft.

Q. Sometime in October, 1923, as near as you can remember? A. Yes.

The Court: Twenty-three or six?

The Witness: Twenty-three or twenty-six, but I cannot remember so sure. [2*]

Q. (By Mr. Botts): Anyway, when you came

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Chung Young.)

back, you had a hearing down at the immigration station? A. Yes.

Q. You had a trial down there? A. Yes.

Q. And witnesses appeared for you?

A. Yes.

Q. And testified you were born here?

A. Yes.

Q. And then you were admitted as a citizen, were you? A. Yes.

Q. And you have lived here ever since?

A. Yes.

Q. Now, some time ago you asked the immigration people to give you a certificate of citizenship to go to China; is that correct? A. Yes.

Q. Is that right? A. Yes.

Q. You want to go to China? A. Yes.

Q. And they have refused to give that to you?

A. Yes.

Q. And you have brought this paper so that you can get a certificate of citizenship? [3]

A. Yes.

Mr. Botts: Cross-examine.

Mr. Hoddick: May it please the Court, I would like to file something in the nature of a pre-trial memorandum which lists authorities on the question of burden of proof.

Cross-Examination

By Mr. Hoddick:

Q. Mr. Young, who went back to China with you in 1902?

A. 1902: 1902 I went China. That is June 3.

(Testimony of Chung Young.)

Q. I say, Who went with you?

A. My mama.

Q. Just your mother. And where did you go in China?

A. Canton, Lung Chee Village.

Q. When did you return to the United States?

A. 1923, October 26, maybe 26, President Taft steamer.

Q. Did you live in Canton the entire time that you were in China, from 1902 to 1923?

A. Beg pardon?

Q. Did you live in Canton the entire time you were in China? A. Yes.

Q. With your mother?

A. My mother stay in China, too, but now the old lady die.

Q. Whom do you mean by that? [4]

The Court: Now the old lady died.

Mr. Hoddick: Oh.

The Witness: Yes.

Q. (By Mr. Hoddick): What boat did you go to China on, do you know?

A. My mother told me it was the Coptic.

Q. What was your father's name, Mr. Young?

A. My father, Lai Yung.

Q. Where was your father when you went back to China in 1902?

A. My father stay here, die here, die in this Island when I went back about four months. I go China about four months old—about four months long and he die here.

(Testimony of Chung Young.)

Q. He died four months before you went to China?

A. No, I went China. After I went China about four months, then he die here.

Q. Do you know why your father didn't go back to China with you?

A. I don't know. Maybe he sick, I don't know. This I don't know. My mother never mentioned about that.

Q. Did you ever submit to the Immigration and Naturalization Service a certificate of death from the Bureau of Vital Statistics, Honolulu, covering your father's death?

A. The interpreter better make sure for me so I understand clear. Could you? [5]

Mr. Hoddick: I will repeat it.

(Harry K. C. Ching was thereupon sworn to act as interpreter, and the witness testified further, through the interpreter, as follows):

Q. (By Mr. Hoddick): Now, Mr. Young, did you ever submit to the Immigration and Naturalization Service here in Honolulu a certificate of death issued by the Territory of Hawaii Bureau of Vital Statistics covering your father's death?

A. Yes.

Q. Now, showing you certificate of death No. A-502, dated December 6, 1948, I ask you if this is the certificate of death which you submitted to the Immigration Service. A. Yes.

(Testimony of Chung Young.)

Q. And this certificate of death relates to your father?

Mr. Botts: Objected to as calling for a conclusion of the witness, if your Honor please. It is an unfair question in the first place. This boy left here when he was one year old or less and came back when he was 24 and apparently got some death certificate which he thought appertained to his father, and I assume it does. I don't know anything about it, but the most he could do is say he got that from the Board of Health, and it covered his father's death, and submitted it to the Immigration Service [6]

Mr. Hoddick: I will withdraw the question.

Q. (By Mr. Hoddick): Were you ever advised as to the date when your father died?

A. Before I came here my witnesses told me, had mentioned it to me.

Q. What did they mention to you?

A. Told me when he died.

Q. Were your witnesses in China at that time?

A. In here, over here.

Q. How did they advise you, by letter?

A. When I came here I asked them.

Q. Had you been in correspondence with these witnesses before you came here?

A. My mother corresponded with them to help me, execute a paper for me to come back here.

Q. And what date did these witnesses say your father had died? A. 1902, September 22.

Q. And your father's name was Lai Yung?

(Testimony of Chung Young.)

A. Yes.

Q. And he died in Honolulu? A. Yes.

Q. And this certificate which you just looked at, is it one which you gave to the Immigration Service as covering your father's death? [7]

A. Yes.

Mr. Botts: It has been asked and answered. He has already said it was.

Mr. Hoddick: No further questions.

Mr. Botts: Unless the Court has something, that is all. That is the case, your Honor.

(Witness excused.)

Mr. Hoddick: Mr. Lee, will you take the stand, please.

ROBERT E. LEE

called as a witness on behalf of the Defendants, being first duly sworn, was examined and testified as follows:

The Clerk: Sit down, please.

Direct Examination

By Mr. Hoddick:

Q. Mr. Lee, will you give your full name, please.

A. Robert E. Lee.

Q. And where are you employed?

A. United States Immigration and Naturalization Service, Honolulu, T. H.

Q. In what capacity?

A. As investigator.

(Testimony of Robert E. Lee.)

Q. And how long have you been employed there? A. Since February of 1948.

Q. And you have access to all of the files of the Immigration and Naturalization Service in Honolulu? A. Yes.

Q. Are you familiar with the application of Chung Young for a certificate of citizenship, Hawaiian Islands? A. I think so.

Q. Did you review the proceedings covering Chung Young's admission to the United States in 1923? A. Did I review them?

Q. Yes. A. Yes.

Q. Who appeared as witnesses for Chung Young at that time?

A. There were three persons. One was Hu Tiam, one was Down Tong Chin, and I do not recall the name of the third witness.

Q. Did you review the files of the Immigration Service to find out whether these witnesses had appeared in behalf of other applicants for admission to the United States?

Mr. Botts: Objected to as incompetent, irrelevant, and immaterial. We are not concerned, your Honor, with what they have done; whether they have been witnesses in other cases or not has nothing to do with the issue here. We are concerned with their testimony here, their appearance and their testimony here. That way of a back door attack upon witnesses seems to be the favorite of the Immigration Service and is [9] condemned by the courts, repeatedly condemned by them. Wit-

(Testimony of Robert E. Lee.)

nesses appeared, they were questioned as to their knowledge of this young man's birth here. I assume Counsel wants to say they were witnesses in some other doubtful case. That is the usual line, but you can't deny this man's citizenship on that account. If we pursue this, we will find out both of these witnesses are dead and can't speak for themselves. This man is here. He has testified here. If they have any evidence to show he was not born here, we will be glad to have them produce it, but not this back door method of un-American approach to an issue.

Mr. Hoddick: May it please the Court, I have frequently heard Mr. Botts urge this is an improper approach, which has been repeatedly overruled by the courts. I have failed to hear him cite an authority. Again I refer to the case of Lum Mon Sing vs. United States, 124 Fed (2d) 21. I refer the Court to that case.

Mr. Botts: That is that same case we had last time. That relates——

Mr. Hoddick: Just a second, Mr. Botts. This was an appeal taken from judgment dismissing a petition for a writ of Habeas Corpus and in this case the court said, in affirming the dismissal of the petition for the writ—and Mr. Botts did appear as counsel:

“However, reference to other files of the Board where the same witnesses had testified was sufficient to justify the Board in viewing the evidence with

(Testimony of Robert E. Lee.)

suspicion, because of the nature of the cases in which they had testified. Viewing such evidence with suspicion, the Board was entitled to give but little weight to it and to hold that it was insufficient to carry appellant's burden."

Now, the plaintiff in this case is confronted with the same burden of establishing his citizenship as he was here, as this man was when he petitioned for a writ of Habeas Corpus, that is, in throwing out the Immigration Authorities' decision on that petition. Now, this means of showing that the plaintiff has not sustained the burden of proof, that his 1923 admission is to be regarded with doubt and is not to be given probative value here, is certainly proper and the Ninth Circuit Court so held in that case.

Mr. Botts: Now, your Honor, as I recall, I pointed out the differences. Lum Mon Sing had gone out of the United States and had reapplied for admission. When he went out of the United States, he consented that upon his return, the court said, he submit his rights to the decision of the immigration authorities. They there have a right, where he is applying for admission, to consider all collateral records. We don't deny that. We are here under the Nationality Act of 1940, which was not even in existence then, and we have a right to come in here, your Honor, and have this [11] case decided by competent evidence, and how Counsel can site an exclusion case, which that is, and say it is the same as a declaratory proceeding such as

(Testimony of Robert E. Lee.)

this is beyond me. They are just as different as day from night.

Mr. Hoddick: A different type of proceeding. It has always been my understanding the plaintiff in a declaratory damage suit bears the burden of proof.

Mr. Botts: He does, and we have assumed it, your Honor, but when you go out of the country, you are consenting that the immigration people look at a thousand files if they want.

The Court: It seems rather far-fetched to me and so much so as to be immaterial in this case.

Mr. Hoddick: May I note an exception to the Court's ruling.

The Court: Yes.

Q. (By Mr. Hoddick): Mr. Lee, showing you Certificate of Death No. A-502, dated December 6, 1948, covering the death of one Lai Yung, which was previously shown to the plaintiff, I ask you if you have examined the records of the Immigration and Naturalization Service for the purpose of determining whether other applicants for admission to the United States have claimed that same death record.

Mr. Botts: We object to that on the same ground, your Honor. This man has testified that that is his father's [12] death record. Now, if Counsel has any evidence to prove it is not his death record, we will welcome it, but to say that some other Chinese have tried to encroach upon that or tried to use it as their own comes in the same class

(Testimony of Robert E. Lee.)

as this other objection. We object to that, if your Honor please. It doesn't make any difference. We are not bound by what other Chinese have done unless they can connect us up with it. If Counsel is able to show that death record does not belong to this man, we will be glad to have him do it, but to say some other Chinese, who are strangers to us, have laid some claim to it is immaterial, a vicarious way of handling the situation.

Mr. Hoddick: I have the same answer to that argument as I did on the previous question.

The Court: Objection sustained.

Mr. Hoddick: Note an exception.

The Court: Exception noted.

Q. (By Mr. Hoddick): Mr. Lee, giving you the Chinese calendar date KS 28 fourth month twenty-seventh day, what would our equivalent calendar date be?

A. KS 28 fourth month twenty-seventh day?

Q. Yes. A. June 3, 1902.

Q. Mr. Lee, you were the Immigration inspector who reviewed Chung Young's application on January 12, 1949, for a [13] certificate of citizenship, Hawaiian Islands? A. Yes, sir.

Q. And what date did he tell you that he departed from Honolulu for China? Would you like to look at the transcript to refresh your recollection?

A. If I may. (Examining document) KS 28 fourth month twenty-seventh day.

Q. Which is June 3, 1902?

(Testimony of Robert E. Lee.)

Mr. Botts: What was that? Fourth month——

Mr. Hoddick: Fourth month twenty-seventh day.

Mr. Botts: What KS?

Mr. Hoddick: Twenty-eight.

The Court: What?

Mr. Hoddick: KS 28, your Honor. That is the date which this man stated, on the hearing, was the date he departed. Now, what was the name of the ship which he said he left on?

The Witness: SS Coptic.

Q. (By Mr. Hoddick): Mr. Lee, have you examined the manifest covering the departure of persons from Honolulu on the SS Coptic on June 3, 1902? A. Yes.

Q. And was the plaintiff's name included anywhere on the list of persons departing from Honolulu at that time? A. I did not find it. [14]

Q. Was the name of the plaintiff's mother included anywhere?

A. I did not find it either.

Q. It does not appear on the manifest?

A. No, sir.

Mr. Botts: He said he couldn't find it. He didn't say it didn't appear. We object to that as leading and suggestive.

Q. (By Mr. Hoddick): You brought with you that manifest? A. Yes.

Q. Will you re-examine it to see if you can find either the name of the plaintiff or the name of his mother. A. Yes.

(Testimony of Robert E. Lee.)

Mr. Botts: If you can make anything out of that, you are good.

Q. (By Mr. Hoddick): Does the name of either the plaintiff or his mother appear in that manifest? A. I do not find it there.

Q. During the course of the examination, Mr. Lee, did the plaintiff tell you what the name of his mother was?

A. He said her name was Hung She.

Q. And that is the name which you were searching for on the manifest? A. That and son.

Q. Yes. Where did you obtain that manifest?

A. It is in the records of the Immigration Service at Honolulu.

Q. Is that manifest sworn to?

A. May I look. I believe it is.

The Court: What was the question?

Mr. Hoddick: Is that manifest sworn to? Your Honor, I would prefer not to offer it in evidence because it is the only record which the Immigration Service has.

A. Yes. Wait a minute. Yes, it is.

Q. (By Mr. Hoddick): By whom?

A. By the master of the vessel. The signature is hard to read.

Mr. Hoddick: No further questions.

Cross-Examination

By Mr. Botts:

Q. Mr. Lee, you have been handling Chinese cases for some time, haven't you, at the Immigration station? A. Approximately two years.

(Testimony of Robert E. Lee.)

Q. And you know the habit and practice of Chinese having various names?

A. They do have various names, yes.

Q. I am going to ask you to return to this manifest. You said this boy was not on that manifest. You tell me the name of this individual on this page here (indicating). You [16] see "Mrs. J. Wada" and beneath "and child"; what is the child's name? A. I do not know.

Q. All right. Now down here we have later on the same page "Mrs. ——" Maybe it is Moto; we can't make out. Beneath that we have two children, "child," "child." What are their names?

A. I do not know.

Q. And down here we have another one on the last page, "boy, one"; what is that boy's name?

A. I do not know.

Q. We have another one named "girl, three"; what is that girl's name? A. I do not know.

Q. Well, then, it is true, is it not, that these old manifests did not list the names of every individual passenger aboard?

Mr. Hoddick: Objection. It is argumentative.

Mr. Botts: It summarizes his testimony. He has just stated it.

Mr. Hoddick: Argumentative.

Mr. Botts: If Counsel wishes to object——

The Court: Well, it is objected to.

Mr. Hoddick: It is very obvious that is so. Your Honor, I think perhaps I had better offer this in evidence, [17] with a request that we be permitted

(Testimony of Robert E. Lee.)

to withdraw it after the termination of these proceedings, or else have some kind of a facsimile prepared of this particular manifest.

Mr. Botts: Well, any way Counsel wants to handle it is all right with me.

The Court: Is there anything in it you want to point out to the Court?

Mr. Hoddick: I want to point out that it is perfectly obvious from the face of the manifest that where a person's name is listed with "child" underneath, that that child is the child of the person whose name is directly above the word "child," or "children."

The Court: What makes it obvious?

Mr. Hoddick: Your Honor would have to examine the manifest, I believe, for that to be apparent.

Mr. Botts: The records of decisions in this court and the Ninth Circuit Court are filled with references to the fact that these old manifests are neither complete nor exact. They have very doubtful probative value for anything, negatively or affirmatively.

Mr. Hoddick: Are you testifying now, Mr. Botts?

Mr. Botts: You say you want to submit it, and I am simply saying it has no evidentiary value. It is not complete. It doesn't lend any light on the issue here. This man doesn't know what name this woman departed under. He [18] knows the Chinese have many names. We have a lot of children

(Testimony of Robert E. Lee.)

lumped in there. I have picked out five or six, no name given to them.

Mr. Hoddick: You will notice, Mr. Botts, where the proper name is given, it is written out at the margin, while the name "boy," "girl," or "child" is indented underneath.

Mr. Botts: What difference does that make? Moreover, your Honor, it is not material whether he left on this sailing of the Coptic or another sailing. He departed and returned and I don't see what evidentiary value there is in it.

Mr. Hoddick: This plaintiff has testified twice, your Honor, that he left——

Mr. Botts: On the basis of hearsay testimony given.

Mr. Hoddick: The statement that he was born in Hawaii is hearsay testimony.

Mr. Botts: It is admissible.

Mr. Hoddick: So is this for the same reason.

Mr. Botts: It is competent.

The Court: About how frequently did the Coptic make a trip to and from China, round trip? I remember the Coptic.

Mr. Botts: It took between two and half and three months, I understand, your Honor. [19]

Mr. Hoddick: That is probably correct, your Honor.

The Court: I believe that is correct.

Mr. Botts: I have no further questions.

The Court: Your offer is to put that manifest in?

Mr. Hoddick: That is right, your Honor, with leave to withdraw it.

(Testimony of Robert E. Lee.)

The Court: With the privilege of withdrawing it. All right, you may.

The Clerk: Defendant's Exhibit No. 1.

(Thereupon, the document above referred to was received in evidence as Defendant's Exhibit No. 1.)

Mr. Botts: I have no further questions, Mr. Lee.

Mr. Hoddick: No further questions.

The Court: Pass that up to me. (Handed to Court.) Does this book contain only the manifests of the SS Coptic or does it contain manifests of various steamers?

Mr. Hoddick: Your Honor, it contains manifests covering all steamers which left Honolulu during the period covered on the outside of the volume.

Mr. Botts: May I ask Mr. Lee another question, your Honor.

The Court: Yes.

Q. (By Mr. Botts): Mr. Lee, you are familiar with the record of the Board of Special Inquiry of 1923 which admitted this petitioner, are you not?

A. Reasonably so, I think.

Q. You recall, do you not, that the Board of Special Inquiry which admitted this applicant in 1923 had examined this manifest and noted at the hearing that they did not find his departure on that?

A. That's right.

Mr. Botts: I would like to have you produce a copy of that record, if you will, please, of 1923.

Mr. Hoddick: May it please the Court, I would

(Testimony of Robert E. Lee.)

like to make a belated objection and move to strike the answer of this witness on the grounds it is beyond the scope of proper cross-examination. I asked no questions of this witness concerning the 1923 admission.

Mr. Botts: It is kind of strained. He produces the manifest of 1923 to draw the inference because the boy's name was not on there that he hadn't left.

Mr. Hoddick: That is the 1902.

Mr. Botts: I want to show that the board which admitted the boy knew that these things were incomplete and they took that into account in weighing the evidence.

Mr. Hoddick: I object that whatever the Board knew or said on that score is immaterial.

Mr. Botts: It certainly shows that it is a late time now to bring that up, after this man's witnesses are all dead, after 27 years, to say, "We can't find this man's name [21] on the manifest," when the very board that certified to his citizenship and had the statutory power to determine it in the first instance knew that fact.

The Court: What was the objection?

Mr. Hoddick: Objection, your Honor, on two grounds: (1) that it is outside the scope of proper cross-examination.

The Court: What is it you are objecting to?

Mr. Hoddick: I move to strike the answers of this witness concerning the 1923 hearing and I objected to the request of this witness to produce the 1923 transcript on the grounds it is outside the scope

(Testimony of Robert E. Lee.)

of the direct examination, on the grounds that the conclusions of the Board at that time are immaterial. It is up to this Court to determine whether this man is a citizen or not, and whatever the conclusions of the Board were in 1923——

Mr. Botts: He has asked if he is familiar with the whole record, if he had reviewed it and gone over it and can tell about it.

Mr. Hoddick: I didn't go over this record.

The Court: You wish the transcript to be presented to the witness?

Mr. Botts: We want to offer it in evidence. I asked him to produce it, your Honor. I thought it should be before the Court. In other cases the Government has always produced the landing record, the hearing of the Board of [22] Special Inquiry, and I thought it should be in this case, especially for the fact that the Board had taken cognizance of the fact that they didn't find the woman's or boy's name on the manifest, but, notwithstanding, they admitted him because of the direct evidence of the witness.

The Court: The objection is overruled.

Mr. Botts: Counsel has offered to hand me, your Honor, the 1923 landing record of this petitioner, which we offer in evidence, and I wish to call to your Honor's attention the Board's statement: "Note: The ss Coptic—" It is the last page. "—departed June 3rd 1902 which is 4th month 27th day KS 28 but the name of the applicant's mother or applicant is not on the list."

(Testimony of Robert E. Lee.)

Mr. Hoddick: Your Honor, I object to the offer in evidence on the grounds it is not material.

The Court: I am rather doubtful of the materiality, as I was of the Coptic's manifest, but having admitted that I admit this.

The Clerk: Plaintiff's Exhibit A.

(Thereupon, the document above referred to was received in evidence as Plaintiff's Exhibit A.)

Mr. Botts: That is all, Mr. Lee.

Mr. Hoddick: That is all. Thank you.

(Witness excused.)

Mr. Hoddick: That is our case, your Honor. [23]

Mr. Botts: That is the case for both sides, your Honor.

The Court: Well, it is my opinion from the evidence that the petitioner is entitled to a certificate.

Mr. Botts: Thank you, your Honor.

The Court: I find nothing to overthrow the evidence submitted that he was born here and it is the judgment of the Court that a certificate should be issued.

Mr. Botts: Thank you, your Honor, I will prepare such order.

(Thereupon, at 11:10 a.m., the hearing in the above-entitled matter was adjourned.) [24]

CERTIFICATE

I, Lucille Hallam, Official Reporter, United States District Court, District of Hawaii, Honolulu, T. H., do hereby certify that the foregoing is a true and correct transcript of my shorthand notes taken in Civil 963, Chung Young vs. J. Howard McGrath, Attorney General of the United States, and D. W. Brewster, etc., April 26, 1950, before Hon. Delbert E. Metzger, Judge.

July 17, 1950.

/s/ LUCILLE HALLAM.

[Endorsed]: Filed September 6, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD ON
APPEAL

United States of America,
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, consists of the following original pleadings, transcript of proceedings, and exhibits of record in said cause:

Complaint and Summons,

General Denial,

Findings of Fact,

Order and Judgment,

Notice of Appeal to United States Court of Appeals for the Ninth Circuit under Rule 73(b),

Minute Order,

Designation of Record on Appeal,

Transcript of Proceedings (April 26, 1950),

Defendants' Exhibit No. 1.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 7th day of September, 1950.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, United States District
Court, District of Hawaii.

[Endorsed]: No. 12688. United States Court of Appeals for the Ninth Circuit. J. Howard McGrath, Attorney General of the United States, and D. W. Brewster, District Director, Immigration and Naturalization Service for the District and Territory of Hawaii, Appellants, vs. Chung Young, Appellee. Transcript of Record. Appeal from the United States District Court for the Territory of Hawaii. Filed September 19, 1950.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

Upon Appeal From the District Court of the
United States for the District of Hawaii

CHUNG YOUNG,

Complainant-Appellee,

vs.

J. HOWARD McGRATH, Attorney General of the
United States, and D. W. BREWSTER, Dis-
trict Director, Immigration and Naturalization
Service for the District and Territory of Ha-
waii,

Defendants-Appellants.

STATEMENT OF POINTS TO BE RELIED
UPON BY DEFENDANTS-APPELLANTS
ON APPEAL

Comes now J. Howard McGrath, Attorney General of the United States, and D. W. Brewster, District Director, Immigration and Naturalization Service for the District and Territory of Hawaii, Defendants-Appellants in the above-entitled cause, by Ray J. O'Brien, United States Attorney for the District of Hawaii, and pursuant to the provisions of Rule 19(6) of the Rules of Practice of the United States Court of Appeals for the Ninth Circuit, hereby states that the Defendants-Appellants in taking this appeal rely upon the following points:

1. The judgment of the United States District Court for the District of Hawaii is not supported by a preponderance of the evidence.

2. The United States District Court for the District of Hawaii erred when it refused to permit witness Robert E. Lee to testify concerning the appearance of Complainant-Appellee's witnesses in doubtful cases before other Boards of Special Inquiry.

3. The United States District Court for the District of Hawaii erred when it refused to permit witness Robert E. Lee to testify concerning the use of the death record of the Complainant-Appellee's purported father by other applicants for admission to the United States.

By reason of said error and other manifest errors appearing in the record designated herein, the judgment should be set aside.

Dated: Honolulu, T. H., this 5th day of September, 1950.

RAY J. O'BRIEN,
United States Attorney,
District of Hawaii,

By /s/ HOWARD K. HODDICK,
Assistant United States Atty.,
District of Hawaii.

[Endorsed]: Filed September 19, 1950.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD TO BE
PRINTED ON APPEAL

Come now J. Howard McGrath, Attorney General of the United States, and D. W. Brewster, District Director, Immigration and Naturalization Service for the District and Territory of Hawaii, Defendants-Appellants in the above-entitled cause, by Ray J. O'Brien, United States Attorney for the District of Hawaii, and hereby designate for inclusion in the printed record on appeal, the following:

1. Complaint, Summons and Marshal's Return.
2. General Denial.
3. Official Reporter's Transcript of Proceedings had on April 26, 1950.
4. Defendants Exhibit No. 1.
5. Findings of Fact dated April 29, 1950.
6. Order and Judgment dated April 29, 1950.
7. Notice of Appeal dated June 29, 1950.
8. Minute Order dated August 8, 1950.
9. Designation of Record on Appeal.
10. Statement of Points to Be Relied Upon by Defendants-Appellants on Appeal.
11. This Designation of Record to Be Printed on Appeal.

Dated: Honolulu, T. H., this 5th day of September, 1950.

RAY J. O'BRIEN,
United States Attorney,
District of Hawaii,

By /s/ HOWARD K. HODDICK,
Assistant United States Atty.,
District of Hawaii.

[Endorsed]: Filed September 19, 1950.

